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SINHDARELLA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINHDARELLA, INC., a California
corporation,

Plaintiff,

v.

KEVIN VU, an individual, d/b/a/
THE BOILING CRAB; CAFE
BONITA, INC., a California
corporation; and DOES 2 through
10,

Defendants.

CASE NO. C 07 04353 WHA

COMPLAINT FOR:

- (1) INFRINGEMENT OF A
FEDERALLY REGISTERED
TRADEMARK;**
 - (2) TRADEMARK AND TRADE
DRESS INFRINGEMENT, AND
UNFAIR COMPETITION;**
 - (3) STATE LAW UNFAIR
COMPETITION;**
 - (4) COMMON LAW TRADEMARK
INFRINGEMENT; AND**
 - (5) CONSTRUCTIVE TRUST.**
- [DEMAND FOR JURY TRIAL]**

1 Plaintiff Sinhdarella, Inc. (“Sinhdarella” or “Plaintiff”), for its
2 complaint against defendants Kevin Vu d/b/a/ THE BOILING CRAB, Café
3 Bonita, Inc. (“Defendants” shall be used herein to refer to defendant Kevin Vu in
4 his individual capacity, or to Cafe Bonita, Inc. and Kevin Vu in his individual
5 capacity collectively) and Does 2 to 10, inclusive, alleges as follows:

6 **JURISDICTION**

7 1. The United States District Court for the Northern District of
8 California has subject matter jurisdiction over this action under 28 U.S.C. § 1331
9 (federal question jurisdiction), 28 U.S.C. § 1338(a) (jurisdiction over trademark
10 actions), 28 U.S.C. § 1338(b) (unfair competition claim joined with a substantial
11 and related claim under the trademark laws), and 15 U.S.C. § 1121(a) because this
12 action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* The Court also has
13 supplemental jurisdiction over the claims arising out of state law pursuant to 28
14 U.S.C. §§ 1338(b) and 1367 because the state law claims arise out of the same
15 operative facts as the federal claims. This Court has personal jurisdiction over
16 Defendants because Defendants reside and/or have their principal place of business
17 in this district and jurisdiction. Personal jurisdiction is also proper over
18 Defendants because Defendants sell and offer for sale goods and services, and
19 otherwise conduct business, in California, including in this judicial district.

20 **VENUE**

21 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)
22 because, among other reasons, Defendants transact business within this district and
23 offers for sale in this district goods and services in a manner that infringes
24 Sinhdarella’s trademark and trade dress rights. In addition, Sinhdarella has
25 suffered harm in this district and a substantial part of the events or omissions
26 giving rise to the claims asserted herein occurred in this district.

INTRADISTRICT ASSIGNMENT

3. Because this is an “Intellectual Property Action” for purposes of Local Rule 3-2(c), that rule provides that this action shall be assigned on a district-wide basis.

PARTIES

4. Sinhdarella, Inc. is a corporation organized and existing under the laws of the State of California, with its principal headquarters located in Fountain Valley, California. Sinhdarella operates a chain of restaurants throughout the United States under the trademark THE BOILING CRAB®, which Sinhdarella has used since at least as early as 2003, and offers restaurant services and related products and services under the trademark THE BOILING CRAB®.

5. On information and belief, defendant Kevin Vu d/b/a/ THE BOILING CRAB is an individual who resides in San Jose, California.

6. On information and belief, defendant Cafe Bonita, Inc. is a corporation organized and previously or currently existing under the laws of the State of California. On information and belief, defendant Kevin Vu is the sole officer and director of Cafe Bonita, Inc.

7. Through counsel, defendant Kevin Vu has represented that defendant Cafe Bonita, Inc. is responsible in some manner for occurrences herein alleged. Based on this representation, Cafe Bonita, Inc. has been named as a defendant. On information and belief, Sinhdarella alleges that defendant Kevin Vu is liable in his individual capacity for all conduct herein alleged. Sinhdarella further alleges that Cafe Bonita, Inc. is an alter-ego of defendant Kevin Vu.

8. On information and belief, defendant Kevin Vu, in his individual capacity, and defendant Cafe Bonita, Inc. are jointly and severally liable for conduct herein alleged.

9. Defendants recently opened and began operating a restaurant that is virtually identical in all material respects to Sinhdarella’s THE BOILING

1 CRAB® restaurants, including by virtue of Defendants' unauthorized use of
2 Sinhdarella's THE BOILING CRAB® trademark as the name of Defendants'
3 restaurant. A true and correct copy of defendant Kevin Vu's Fictitious Business
4 Name Statement filed with the Santa Clara County Clerk – Recorder's Office is
5 attached hereto as Exhibit A.

6 10. Plaintiff is unaware of the true names and capacities of the
7 defendants sued herein as Does 2 through 10, inclusive, and therefore sues those
8 additional defendants by such fictitious names. Plaintiff will amend this
9 Complaint to allege their true names and capacities when ascertained.

10 11. Upon information and belief, Plaintiff alleges that each of the
11 fictitiously named defendants is responsible in some manner for the occurrences
12 herein alleged and that Plaintiff's damages as herein alleged were proximately
13 caused by their conduct.

14 **FACTS COMMON TO ALL CLAIMS**

15 **SINHDARELLA'S *THE BOILING CRAB*® CHAIN OF RESTAURANTS**

16 12. In 2003, Sinhdarella opened its first restaurant under the
17 trademark THE BOILING CRAB®, in California. A true and correct copy of a
18 picture of Sinhdarella's first THE BOILING CRAB® restaurant is attached hereto
19 as Exhibit B.

20 13. Based on the huge popularity and success of Sinhdarella's THE
21 BOILING CRAB® restaurants, Sinhdarella has since expanded its chain of THE
22 BOILING CRAB® restaurants to include locations throughout the United States,
23 including three THE BOILING CRAB® restaurants in California and a THE
24 BOILING CRAB® restaurant in Houston, Texas. Sinhdarella is also actively
25 exploring further expansion of its chain of THE BOILING CRAB® restaurants to
26 additional locations throughout the United States.

27 14. Sinhdarella's THE BOILING CRAB® restaurants offer a
28 unique selection of Louisiana-style seafood, including blue crab, oysters,

1 Dungeness crab, shrimp, and crawfish seasoned with THE BOILING CRAB®
2 restaurants' distinctive blends of spices and seasonings. Customers of THE
3 BOILING CRAB® restaurants are also treated to a singularly enjoyable dining
4 experience that is characterized by the innovative food presentations, distinctive
5 restaurant décor, unique menus, and one-of-a-kind dining experience pioneered
6 and provided by Sinh darella's THE BOILING CRAB® restaurants. A true and
7 correct copy of a picture of the inside of one of Sinh darella's THE BOILING
8 CRAB® restaurants is attached hereto as Exhibit C. Further contributing to
9 Sinh darella's distinctive appearance and appeal, Sinh darella's unique menus use a
10 distinctive format, contain unique content, and are distinctively printed on eye-
11 catching colored paper, such as blue, hot pink, yellow, green, or orange colored
12 paper. A true and correct copy of THE BOILING CRAB® restaurants' unique
13 orange menu used around the time that Defendants began using Sinh darella's THE
14 BOILING CRAB® trademark and distinctive trade dress without authorization is
15 attached hereto as Exhibit D.

16 15. THE BOILING CRAB® chain of restaurants has become
17 extremely well known and respected among consumers, who have come to
18 associate Sinh darella's THE BOILING CRAB® trademark with Sinh darella's
19 THE BOILING CRAB® restaurants and the one-of-a-kind dining experience that
20 Sinh darella pioneered and provides. Sinh darella's THE BOILING CRAB®
21 restaurants have also received unsolicited attention from, and positive recognition
22 by, the media, which has further contributed to consumers' widespread recognition
23 of Sinh darella's THE BOILING CRAB® restaurants.

24 16. Additionally, Sinh darella has expended considerable time,
25 effort, and money promoting and advertising its chain of THE BOILING CRAB®
26 restaurants, further contributing to the recognition and success of THE BOILING
27 CRAB® chain of restaurants. Today, Sinh darella continues to promote and
28 advertise its THE BOILING CRAB® restaurants. A true and correct copy of one

1 of Sinh darella's paid advertisements for its THE BOILING CRAB® restaurants is
2 attached hereto as Exhibit E.

3 17. Sinh darella has also used the trademark THE BOILING
4 CRAB® extensively on the internet and, as a result, Sinh darella's THE BOILING
5 CRAB® trademark has developed a strong internet presence and recognition by
6 consumers who use the internet. Sinh darella is the registrant of various domain
7 names incorporating, in whole or in part, THE BOILING CRAB® trademark,
8 including theboilingcrab.com and boilingcrab.com. Sinh darella owns and operates
9 a website at these domain names in order to promote, and provide consumers with
10 information concerning, Sinh darella's nationwide chain of THE BOILING
11 CRAB® restaurants. Sinh darella's website makes extensive use of THE
12 BOILING CRAB® trademark and embodies part of the unique look-and-feel of
13 THE BOILING CRAB® dining experience. A true and correct copy of the home
14 page of Sinh darella's website at www.theboilingcrab.com is attached hereto as
15 Exhibit F.

16 18. In addition to owning and operating a THE BOILING CRAB®
17 website at www.theboilingcrab.com, Sinh darella also uses its trademark THE
18 BOILING CRAB® extensively on the internet through the popular social
19 networking site, myspace.com. In particular, Sinh darella operates a web page at
20 www.myspace.com/theboilingcrab in order to further promote its THE BOILING
21 CRAB® trademark and to provide information about and promote its chain of THE
22 BOILING CRAB® restaurants. A true and correct copy of the page maintained by
23 Sinh darella at www.myspace.com/theboilingcrab is attached hereto as Exhibit G.

24 19. Through Sinh darella's extensive use, marketing, branding, and
25 promotion of its THE BOILING CRAB® trademark and THE BOILING CRAB®
26 chain of restaurants, its trademark THE BOILING CRAB® is recognized by
27 consumers throughout the United States and around the world, enjoying substantial
28 recognition, goodwill, and association with THE BOILING CRAB® restaurant

chain. The public distinguishes Sinh darella's goods and services from those of others who offer the same or similar goods and services on the basis of its trademark THE BOILING CRAB®. Sinh darella's THE BOILING CRAB® trademark has acquired secondary meaning throughout the United States, including California.

**SINHDARELLA'S FEDERAL REGISTRATION OF ITS
THE BOILING CRAB® TRADEMARK**

20. Sinh darella is the owner of United States Trademark Registration Number 3,256,219 for the mark THE BOILING CRAB® in connection with restaurant services in International Class 43. A true and correct copy of Sinh darella's federal trademark registration for THE BOILING CRAB® trademark is attached hereto as Exhibit H.

21. Sinh darella's federal registration of its THE BOILING CRAB® trademark constitutes *prima facie* evidence that the mark is valid and that Sinh darella is entitled to exclusive use of the mark THE BOILING CRAB® in commerce throughout the United States for restaurant services and in connection with goods and services related thereto.

**DEFENDANTS' INFRINGEMENT OF SINHDARELLA'S THE BOILING
CRAB® TRADEMARK AND TRADE DRESS**

22. Recently, several years after Sinh darella first began using its THE BOILING CRAB® trademark and distinctive trade dress, Defendants opened and began operating a restaurant that imitates in all material respects the name and distinctive trade dress of Sinh darella's THE BOILING CRAB® restaurant chain. Most blatantly, in a clear effort to confuse consumers into thinking that Defendants are somehow associated or affiliated with Sinh darella's THE BOILING CRAB® nationwide chain of restaurants, Defendants precisely imitate Sinh darella's THE BOILING CRAB® trademark by calling Defendants' restaurant "The Boiling Crab," even though Defendants do not have any affiliation with, or authorization

1 from, Sinhdarella. A true and correct copy of a picture of Defendants' infringing
2 restaurant and unauthorized use of Sinhdarella's THE BOILING CRAB®
3 trademark is attached hereto as Exhibit I.

4 23. Defendants' blatant imitation of Sinhdarella's THE BOILING
5 CRAB® restaurants did not stop with unauthorized use of Sinhdarella's THE
6 BOILING CRAB® trademark as the name of Defendants' restaurant. Rather,
7 Defendants have also blatantly copied the unique trade dress used by Sinhdarella's
8 THE BOILING CRAB® restaurants in a further effort to confuse consumers into
9 thinking Defendants are somehow associated or affiliated with Sinhdarella's THE
10 BOILING CRAB® nationwide chain of restaurants. Defendants' menu, a true and
11 correct copy of which is attached hereto as Exhibit J, is virtually an identical copy
12 of the menu used by Sinhdarella around the time that Defendants opened their
13 restaurant, a true and correct copy of which is attached hereto as Exhibit D. As can
14 be seen by comparing Exhibit D with Exhibit J, Defendants' menu is the exact
15 same shape (rectangular), size (4.25"x11"), and color (orange) as the menu for
16 Sinhdarella's THE BOILING CRAB® restaurants used around the time that
17 Defendants opened their infringing restaurant. Additionally, Defendants' menu
18 offers the same five entrees (crab, oysters (raw), crab, crawfish, and shrimp), two
19 of the same extras in the same order (corn and sausage), and the same drinks in the
20 same order (soda, bottled water, domestic beer, and imported beer) as does
21 Sinhdarella's THE BOILING CRAB® menu. *Compare Exhibit D with Exhibit J*.
22 In fact, Defendants' imitation of Sinhdarella's THE BOILING CRAB® restaurants
23 is so complete that Defendants even copied precisely the same hours of operation
24 as those used by Sinhdarella's THE BOILING CRAB® restaurants: Mon-Fri 3:00
25 pm-10:00 pm and Sat-Sun 12:00 pm-10:00 pm! *Compare Exhibit D with Exhibit*
26 J.

27 24. As can be seen by comparing the interior of Defendants'
28 restaurant, a true and correct copy of a picture of which is attached hereto as

1 Exhibit K, with a copy of the interior of a genuine Sinhdarella THE BOILING
2 CRAB® restaurant, a true and correct copy of a picture of which is attached hereto
3 as Exhibit L, Defendants' restaurant also imitates the unique trade dress of
4 Sinhdarella's THE BOILING CRAB® restaurants. For example, Defendants'
5 restaurant copies the overall, non-functional configuration of Sinhdarella's THE
6 BOILING CRAB® restaurants, including, but not limited to, by imitating the color
7 of the walls, the signs on the walls, the hanging of fishing nets on the walls,
8 affixing sculptures of red-colored crustaceans on the walls, the configuration of the
9 tables and chairs, Sinhdarella's menus, and the overall look-and-feel of the
10 restaurant. *Compare Exhibit K with Exhibit L.*

11 25. Sinhdarella is informed and believes, and based thereon alleges,
12 that at the time Defendants opened and began operating their restaurant under the
13 name "The Boiling Crab" and imitating Sinhdarella's distinctive THE BOILING
14 CRAB® trade dress, Defendants knew of Sinhdarella's superior rights in the
15 trademark THE BOILING CRAB® and in Sinhdarella's distinctive trade dress,
16 and knew or should have known that Defendants' unauthorized use of
17 Sinhdarella's THE BOILING CRAB® trademark and trade dress constitutes a
18 violation of Sinhdarella's rights in the trademark THE BOILING CRAB® and in
19 Sinhdarella's distinctive THE BOILING CRAB® trade dress. Defendants'
20 infringement of Sinhdarella's trademark and trade dress rights is intentional and
21 willful.

22 26. Defendants' use of the trademark THE BOILING CRAB® for
23 restaurant services and his willful and intentional infringement of Sinhdarella's
24 distinctive trade dress is likely to cause confusion, mistake, and deception of
25 consumers as to the source, quality, and nature of Defendants' services and goods,
26 including Defendants' services and goods offered under or in connection with the
27 trademark THE BOILING CRAB®, thereby proximately causing injury to
28 Sinhdarella and its trademark rights.

27. Not surprisingly, Defendants' imitation of Sinh darella's THE BOILING CRAB® restaurants through unauthorized use of THE BOILING CRAB® trademark and Sinh darella's distinctive trade dress has caused actual confusion among consumers. In part because of the sub-par quality of Defendants' food and service, the confusion caused by Defendants' willful infringement of Sinh darella's THE BOILING CRAB® trademark and trade dress has caused significant injury to the reputation of Sinh darella's THE BOILING CRAB® chain of restaurants, including by virtue of negative reviews written about Defendants' infringing restaurant. Sinh darella has also suffered additional significant injury as a result of Defendants' willful and intentional infringement of Sinh darella's THE BOILING CRAB® trademark and trade dress, including as the result of lost business opportunities.

28. In a letter dated December 13, 2007, counsel for defendant Kevin Vu stated, "Mr. Vu intends to open a restaurant in Sacramento named 'The Boiling Crayfish.'" In another letter dated December 13, 2007, counsel for defendant Kevin Vu clarified his earlier letter stating, "I am advised that my client's restaurant in Sacramento will be named 'The Boiling Crawfish' and not 'The Boiling Crayfish.'" Sinh darella alleges that defendant Kevin Vu's use of the name "The Boiling Crawfish" is likely to cause confusion with Sinh darella's THE BOILING CRAB® trademark and therefore constitutes infringement, unfair competition, and unfair business practices under 15 U.S.C. § 1114(1), 15 U.S.C. § 1125(a), California Business and Professions Code §§ 17200 *et seq.* and California common law as set forth in paragraphs 33 through 62 below.

**DEFENDANTS HAVE IGNORED SINHDARELLA'S DEMANDS
THAT DEFENDANTS STOP INFRINGING SINHDARELLA'S
THE BOILING CRAB® TRADEMARK**

29. On May 22, 2007, counsel for Sinh darella sent a letter to defendant Kevin Vu objecting to Defendants' unauthorized use of Sinh darella's

1 THE BOILING CRAB® trademark. That letter demanded, among other things,
2 that Defendants immediately stop using the trademark THE BOILING CRAB®. A
3 true and correct copy of that letter is attached hereto as Exhibit M.

4 30. On June 26, 2007, having not heard anything from Defendants
5 in response to the initial letter, counsel for Sinhdarella sent another letter to
6 defendant Kevin Vu, again objecting to Defendants' unauthorized use of
7 Sinhdarella's THE BOILING CRAB® trademark and repeating the demands
8 contained in the May 22, 2007 letter. A true and correct copy of that letter is
9 attached hereto as Exhibit N.

10 31. On July 23, 2007, still having not heard anything from
11 Defendants in response to either of the first two letters, counsel for Sinhdarella sent
12 another letter to defendant Kevin Vu – this time by hand delivery directly to
13 Defendants' restaurant – again objecting to Defendants' unauthorized use of
14 Sinhdarella's THE BOILING CRAB® trademark and once again repeating the
15 demands contained in Sinhdarella's May 22, 2007 letter. A true and correct copy
16 of that letter is attached hereto as Exhibit O.

17 32. Despite Sinhdarella's repeated demands that Defendants stop
18 their blatant infringement of Sinhdarella's THE BOILING CRAB® trademark and
19 trade dress, Defendants have completely ignored Sinhdarella's efforts to reach an
20 informal resolution of this matter and continued, unabashedly, with their willful
21 and intentional infringement of Sinhdarella's THE BOILING CRAB® trademark
22 and trade dress rights.

23 **FIRST CLAIM FOR RELIEF**

24 **(Infringement of a Federally Registered Trademark)**

25 **15 U.S.C. § 1114(1)**

26 33. Sinhdarella realleges and incorporates by reference the
27 allegations in paragraphs 1 through 32, as if set forth fully herein.
28

1 34. This claim is against Defendants for trademark infringement in
2 violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

3 35. Defendants have used and is using in interstate commerce
4 Sinhdarella's valid and federally registered THE BOILING CRAB® trademark in
5 connection with restaurant services in such a way as is likely to cause confusion, to
6 cause mistake, and/or to deceive the consuming public.

7 36. Sinhdarella never consented to or authorized Defendants'
8 adoption or commercial use of the trademark THE BOILING CRAB® for any
9 purpose. Defendants therefore have infringed and is infringing Sinhdarella's THE
10 BOILING CRAB® trademark in violation of Section 32(1)(a) of the Lanham Act,
11 15 U.S.C. § 1114(1)(a).

12 37. Upon information and belief, Sinhdarella alleges that, at all
13 times relevant to this action, including when Defendants first adopted the mark
14 THE BOILING CRAB® and commenced commercial use of the mark THE
15 BOILING CRAB® in connection with restaurant services, Defendants knew of
16 Sinhdarella's prior adoption and widespread commercial use of the trademark THE
17 BOILING CRAB® in connection with restaurant services and related goods and
18 services and knew of the valuable goodwill and reputation acquired by Sinhdarella
19 in connection with its THE BOILING CRAB® trademark. Defendants'
20 infringement of Sinhdarella's THE BOILING CRAB® trademark is willful and
21 deliberate.

22 38. Sinhdarella has no control over the quality of Defendants'
23 infringing restaurant services, and because of the source confusion engendered by
24 Defendants' willful trademark infringement, Sinhdarella's valuable goodwill in
25 and to its federally registered trademark THE BOILING CRAB® is being
26 significantly harmed. Defendants' use of the mark THE BOILING CRAB®, in
27 blatant imitation of Sinhdarella's THE BOILING CRAB® trademark, has caused
28

1 confusion, mistake, and deception to purchasers as to the source and origin of
2 Defendants' services and products sold under the mark THE BOILING CRAB®.

3 39. Defendants' activities are intended, and are likely, to lead the
4 public to conclude, incorrectly, that Defendants' restaurant services originate with,
5 are sponsored by, and/or are authorized by Sinh darella and its THE BOILING
6 CRAB® brand, to the damage and harm of Sinh darella and the consuming public.
7 Defendants' activities constitute willful and deliberate infringement of
8 Sinh darella's federally registered trademark in violation of the Lanham Act,
9 including, but not limited to, 15 U.S.C. § 1114(1). Accordingly, Sinh darella is
10 entitled to recover Defendants' profits, together with Sinh darella's damages,
11 increased monetary recoveries as provided by the Lanham Act, as well as costs of
12 the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham
13 Act, 15 U.S.C. § 1117(a).

14 40. Defendants' activities have caused and will continue to cause
15 irreparable harm to Sinh darella for which Sinh darella has no adequate remedy at
16 law, in that: (i) Sinh darella's THE BOILING CRAB® trademark is a unique and
17 valuable property right that has no readily determinable market value; (ii)
18 Defendants' infringement constitutes an interference with Sinh darella's goodwill
19 and customer relationships and will substantially harm Sinh darella's reputation as
20 a source of high quality goods and services, as well as dilute the substantial value
21 of Sinh darella's THE BOILING CRAB® name and trademark; and (iii)
22 Defendants' wrongful conduct, and the resulting damages to Sinh darella, are
23 continuing. Accordingly, Sinh darella is entitled to preliminary and permanent
24 injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order under 15 U.S.C. §
25 1118 impounding all goods and other materials in Defendants' possession,
26 custody, or control that bear the trademark THE BOILING CRAB®.

27 41. Sinh darella also is entitled to, in addition to the other remedies
28 described herein, the cost of corrective advertising and a reasonable royalty as a

1 result of Defendants' infringement of Sinhdarella's federally registered THE
2 BOILING CRAB® trademark.

3 42. This is an exceptional case, further entitling Sinhdarella to
4 additional remedies and also entitling Sinhdarella to recover its attorneys' fees and
5 costs incurred in prosecuting this action and stopping Defendants' willful
6 trademark infringement, pursuant to 15 U.S.C. § 1117.

7 **SECOND CLAIM FOR RELIEF**

8 **(Trademark and Trade Dress Infringement, and Unfair Competition)**

9 **15 U.S.C. § 1125(a)**

10 43. Sinhdarella realleges and incorporates by reference the
11 allegations in paragraphs 1 through 42, as if set forth fully herein.

12 44. This claim is against Defendants for trademark and trade dress
13 infringement, and unfair competition, in violation of Section 43(a) of the Lanham
14 Act, 15 U.S.C. § 1125(a).

15 45. Sinhdarella's THE BOILING CRAB® trademark and
16 distinctive trade dress, including the overall, non-functional configuration of
17 Sinhdarella's THE BOILING CRAB® restaurants, including, but not limited to,
18 the menus, food items, color of the walls, the signs on the walls, the hanging of
19 fishing nets on the walls, affixing sculptures of red-colored crustaceans on the
20 walls, the configuration of the tables and chairs, and the overall look-and-feel of
21 the restaurant, all as described above, are nonfunctional and inherently distinctive.
22 They have acquired secondary meaning in the eyes of the public.

23 46. Defendants' use and imitation of the trademark THE BOILING
24 CRAB® and the inherent trade dress of Sinhdarella's THE BOILING CRAB®
25 restaurants is so similar to Sinhdarella's THE BOILING CRAB® mark and trade
26 dress that Defendants are likely to cause confusion, mistake, and/or to deceive the
27 consuming public as to the affiliation, connection, and/or association between
28 Sinhdarella's THE BOILING CRAB® restaurants and Defendants' "The Boiling

Crab” restaurant. Defendants’ unauthorized use of the trademark THE BOILING CRAB® and Sinhdarella’s trade dress infringes Sinhdarella’s THE BOILING CRAB® trademark and trade dress, and constitutes unfair competition. Defendants’ unauthorized use of the trademark THE BOILING CRAB® also constitutes a false designation of origin of products and services.

47. On information and belief, at all times relevant to this action, including at the time Defendants first copied and began using without authorization Sinhdarella’s THE BOILING CRAB® trademark and distinctive trade dress, Defendants knew of Sinhdarella’s prior adoption and widespread commercial use of the trademark THE BOILING CRAB® and distinctive trade dress, and knew of the valuable goodwill and reputation acquired by Sinhdarella in connection with its THE BOILING CRAB® trademark and trade dress. Defendants’ infringement of Sinhdarella’s THE BOILING CRAB® trademark and trade dress is therefore knowing, willful, and deliberate.

48. Defendants’ activities are intended to, and are likely to, lead the public to conclude, incorrectly, that Defendants’ restaurant services originate with, are sponsored by, and/or are authorized by Sinhdarella and its nationwide chain of THE BOILING CRAB® restaurants, to the damage and harm of Sinhdarella and the consuming public. Defendants’ activities constitute willful and deliberate infringement of Sinhdarella’s THE BOILING CRAB® trademark and trade dress in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1125(a). Accordingly, Sinhdarella is entitled to recover Defendants’ profits together with Sinhdarella’s damages, an increased monetary recovery, as well as costs of the action and reasonable attorneys’ fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

49. Defendants’ activities have caused and will continue to cause irreparable harm to Sinhdarella for which Sinhdarella has no adequate remedy at law, in that: (i) Sinhdarella’s rights in its THE BOILING CRAB® trademark and

trade dress are unique and valuable property rights which have no readily determinable market value; (ii) Defendants' infringement constitutes an interference with Sinhdarella's goodwill and customer relationships and will substantially harm Sinhdarella's reputation as a source of high quality goods and services, as well as harm the substantial value of Sinhdarella's THE BOILING CRAB® trademark and trade dress; and (iii) Defendants' wrongful conduct, and the resulting damages to Sinhdarella, are continuing. Accordingly, Sinhdarella is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order under 15 U.S.C. § 1118 impounding all goods and other materials in Defendants' possession, custody, or control that bear the trademark THE BOILING CRAB®.

50. Sinhdarella also is entitled to, in addition to the other remedies described herein, the cost of corrective advertising and a reasonable royalty as a result of Defendants' infringement of Sinhdarella's THE BOILING CRAB® trademark and trade dress.

51. This is an exceptional case, further entitling Sinhdarella to additional remedies and also entitling Sinhdarella to recover its attorneys' fees and costs incurred in prosecuting this action and stopping Defendants' willful trademark and trade dress infringement, pursuant to 15 U.S.C. § 1117.

THIRD CLAIM FOR RELIEF

(Unfair Competition Under State Law)

Cal. Bus. & Prof. Code §§ 17200 *et seq.* and California Common Law

52. Sinhdarella realleges and incorporates by reference the allegations in paragraphs 1 through 51, as if set forth fully herein.

53. Defendants' acts as detailed herein have impaired Sinhdarella's goodwill, have created a likelihood of confusion, are likely to deceive consumers, and have otherwise adversely affected Sinhdarella's business and reputation by Defendants' use of unfair, fraudulent, and unlawful business practices. These acts

1 trademark and trade dress. Sinhdarella is therefore entitled to injunctive relief
 2 prohibiting Defendants from continuing the unlawful acts described herein.
 3 Sinhdarella is also entitled to damages, Defendants' profits, punitive damages, an
 4 accounting, costs, attorneys' fees and other damages and monetary relief, all
 5 according to proof at trial.

6 **FIFTH CLAIM FOR RELIEF**

7 **(Constructive Trust)**

8 59. Sinhdarella realleges and incorporates by reference the
 9 allegations in paragraphs 1 through 58, as if set forth fully herein.

10 60. Sinhdarella is entitled to all profits Defendants have derived
 11 from infringement of Sinhdarella's rights pursuant to 15 U.S.C. § 1117(a), 15
 12 U.S.C. § 1125(c)(2), and the statutory and common law of the United States and
 13 State of California.

14 61. Sinhdarella alleges on information and belief that Defendants
 15 own and possess tangible real and personal property and assets consisting of or
 16 obtained with profits from or obtained by Defendants' unlawful acts, as alleged
 17 herein.

18 62. Defendants hold the above-mentioned tangible real and
 19 personal property and assets as constructive trustee for the benefit of Sinhdarella,
 20 in an amount to be proven at trial.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Sinhdarella prays for entry of a judgment ordering
 23 and declaring:

24 1. That, preliminarily pending trial of this action and permanently
 25 thereafter, Defendants and their agents, servants, employees, successors, licensees
 26 and assignees, and all persons, firms, entities, partners, or corporations in active
 27 concert or participation with Defendants, are preliminarily and thereafter
 28 permanently enjoined from doing, threatening, or attempting to do or causing to be

1 done, either directly or indirectly, by any means, method or device, any of the
2 following acts:

3 (a) Directly or indirectly infringing, using, or displaying the
4 trademark THE BOILING CRAB® or Sinh darella's THE BOILING CRAB®
5 trade dress, or any mark or trade dress similar thereto, in any manner or for any
6 purpose, including, but not limited to, in advertising, promoting, producing,
7 distributing, selling, offering for sale, or giving away any services or products
8 which infringe, use, or display Sinh darella's THE BOILING CRAB® trademark or
9 the trade dress of Sinh darella's THE BOILING CRAB® restaurants, or any marks
10 or trade dress similar thereto;

11 (b) Using any term that is likely to be confused with
12 Sinh darella's THE BOILING CRAB® trademark;

13 (c) Using any trade dress likely to be confused with the trade
14 dress of Sinh darella's THE BOILING CRAB® restaurants, including the overall,
15 non-functional configuration of Sinh darella's THE BOILING CRAB® restaurants,
16 including, but not limited to, the menus, food items, color of the walls, the signs on
17 the walls, the hanging of fishing nets on the walls, affixing sculptures of red-
18 colored crustaceans on the walls, the configuration of the tables and chairs, and the
19 overall look-and-feel of the restaurant;

20 (d) Falsely representing, misleading, or deceiving consumers
21 into believing that services or products advertised, promoted, produced,
22 distributed, sold, or offered for sale by Defendants originate from Sinh darella or its
23 THE BOILING CRAB® restaurants, or are sponsored, approved, licensed by, or
24 associated with Sinh darella or its THE BOILING CRAB® restaurants, or that
25 Defendants or their services or products are in some way associated or affiliated
26 with Sinh darella or its THE BOILING CRAB® restaurants;

27 (e) Destroying, concealing, altering, or otherwise disposing
28 of any documents, electronically stored information, or other evidence that relates

1 or refers to the advertising, promotion, production, distribution, sale, or giving
2 away Defendants' products and services which infringe Sinhdarella's THE
3 BOILING CRAB® trademark and trade dress, including, but not limited to, sales
4 journals, supplier journals, customer journals, ledgers, invoices, purchase orders,
5 inventory control documents, bank records, correspondence, and e-mail messages;

6 (f) Committing any other acts calculated to or that do
7 unfairly compete with Sinhdarella in any manner;

8 (g) Filing or prosecuting any trademark application for the
9 trademark THE BOILING CRAB® or any mark confusingly similar thereto;

10 (h) Filing or maintaining any business license, d/b/a, or
11 similar document using the trademark THE BOILING CRAB® or any mark
12 confusingly similar thereto; and

13 (i) Registering or using any trade name or domain name
14 containing or consisting of the trademark THE BOILING CRAB® or any mark
15 confusingly similar thereto;

16 2. That Defendants be required to account for all profits derived
17 by them from their trade, infringing conduct, unfair practices and competition, and
18 for an order of restitution of the entire amount of those profits, in amounts to be
19 proven at trial, to Sinhdarella;

20 3. That Defendants be required to turn over to be impounded
21 during the pendency of this action all goods and other materials in their possession,
22 custody, or control used or involved in the trademark and trade dress infringement
23 complained of herein, and to turn over for destruction all such goods and other
24 materials, or in the alternative that all such items be subject to seizure;

25 4. That Defendants be ordered to pay all of Sinhdarella's
26 attorneys' fees, costs, and disbursements incurred in this suit, in bringing this
27 action for the legal enforcement of its trademark and trade dress rights, and in
28

1 connection with all efforts to stop Defendants' trademark infringement, trade dress
2 infringement, and unfair competition;

3 5. That, in addition to being ordered to pay its profits attributable
4 to the infringing conduct complained of herein to Sinhdarella, Defendants also be
5 ordered to pay their infringing profits as monetary damages and reasonable
6 royalties, to be increased by the Court by such amount as the Court deems to be
7 just, together with Sinhdarella's damages, all of which, according to the
8 circumstances of this case, should be increased and trebled as provided by law,
9 including 15 U.S.C. § 1117, and paid to Sinhdarella;

10 6. That Defendants be ordered to pay exemplary or punitive
11 damages to the extent available under, and according to, law;

12 7. That Defendants have willfully and deliberately committed acts
13 of trademark infringement, trade dress infringement, and unfair competition
14 against Sinhdarella;

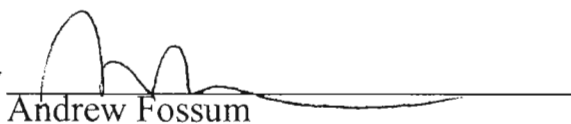
15 8. That Defendants be ordered to pay interest according to law;

16 9. That Defendants be ordered to pay the costs of corrective
17 advertising; and

18 10. For all such other, further, and different relief that this Court
19 deems just and proper.

20
21 Dated: December 27, 2007

Respectfully submitted,
LATHAM & WATKINS

22
23
24 By 
25 Andrew Fossum

26 Attorneys for Plaintiff
27 SINHDARELLA, INC.
28

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and Local Rule 3-6, Plaintiff Sinhdarella, Inc. hereby demands a trial by jury of any and all issues triable of right by a jury, including all issues so triable that are raised herein and all such issues that are hereafter raised in this action.

Dated: December 27, 2007

Respectfully submitted,

LATHAM & WATKINS

By 
Andrew Fossum

Attorneys for Plaintiff
SINHDARELLA, INC.

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT A

READ INSTRUCTIONS ON REVERSE

A MAILING NAME AND ADDRESS (OPTIONAL):

NAME KEVIN VU

ADDRESS 1036 SUMMERHILL CT

CITY/STATE/ZIP SAN JOSE, CA 95128

FORM MUST BE TYPED OR LEGIBLY COMPLETED USING BLACK INK ONLY.

File Number: **478892**

No. of Pages: 1



File Date: 5/31/2006

Expires: 5/31/2011

Fee Total: 37.00

Clerk ID: 020

BRENDA DAVIS, County Clerk Recorder
SANTA CLARA COUNTY CLERK - RECORDER'S OFFICE

FICTITIOUS BUSINESS NAME STATEMENT. THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS:

1. Fictitious Business Name(s) (Please number additional names; use an ADDENDUM form if additional form is required)
THE GOILUNG CRAB

2. Street Address of Principal Place of Business in California - P.O. Box, FMS NOT acceptable
393 N. CAPITAL AVE City SAN JOSE State CA Zip 95133

3. Full Name of Registrant/Owner
KEVIN VU
Residence Address (P.O. Box or FMS not acceptable)
1036 SUMMERHILL CT
City SAN JOSE State CA Zip 95128
(If a CORP., LLC, LLP, or LP, enter the State where incorporated)

Full Name of Registrant/Owner
Residence Address (P.O. Box or FMS not acceptable)
City State Zip
(If a CORP., LLC, LLP, or LP, enter the State where incorporated)



4. This business is conducted by: (PLEASE CHECK ONE BOX, ONLY from ONE GROUP. THE FOLLOWING GROUP WILL NOT HAVE A BOX CHECKED)
GROUP ONE: ☒ Sole proprietor ☐ Limited liability ☐ General partnership ☐ Corporation ☐ Joint venture ☐ Business trust
☐ An unincorporated association other than a partnership ☐ OTHER (specify) _____
OR
GROUP TWO: ☐ Corporation ☐ Limited liability company ☐ Limited liability partnership ☐ Limited partnership

5. Registrant began conducting business under the fictitious business name(s) listed above ☐ on (date) _____
or: ☒ has not yet begun

6. This filing is a: ☒ New filing (Publication Required) ☐ Renewal within 40 days of expiration with no changes from the previous filing
☐ Renewal with changes (Publication Required) ☐ Renewal after 40 days of expiration date (Publication Required)

CURRENT / PREVIOUS FILE NUMBER _____ (REQUIRED for a renewal or renewal)

I DECLARE THAT ALL INFORMATION IN THIS STATEMENT IS TRUE AND CORRECT.
(A registrant who declares to the information which is or the truth to be false is guilty of a crime.)

7A. GROUP ONE REGISTRANT SIGNATURE
Signed X Kevin Vu
Print Full Name KEVIN VU

7B. GROUP TWO REGISTRANT (CORPORATE, LLC, LLP, or LP)
An officer must sign and complete the below information
Entity Name _____
Officer Signature X _____
Print Name and Title _____
APPROPRIATELY SIGNED AND COMPLETED BY THE REGISTRANT OF THIS OFFICE

THIS STATEMENT WAS FILED WITH THE COUNTY CLERK-RECORDER OF SANTA CLARA COUNTY ON THE DATE INDICATED ON THE FILING LABEL ABOVE

NOTICE: This Fictitious Business Name Statement expires five years from the date it was filed in the Office of the County Clerk-Recorder. A new Fictitious Business Name Statement must be filed before that time.

This filing of this statement does not of itself constitute the use in this state of a fictitious business name in violation of the laws of another state (foreign, state or even here law (see Section 14999 of the Code of Civil Procedure and Probation Code))

I hereby certify that this copy is a correct copy of the original Fictitious Business Name Statement on file in my office.

Brenda Davis, County Clerk-Recorder

[Signature] Deputy

EXHIBIT A

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT B



EXHIBIT B
Page 22

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT C



Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT D






The Boiling Crab

(714) 265-(CRAB) 2722

14241 Euclid St. #C-116

Garden Grove, CA 92843

MENU

	BLUE CRAB..... (seasonal).....	\$6.99/lb
	OYSTERS (raw).....	\$7.99/6 or \$13.99/DZ
	DUNGENESS CRAB..... (seasonal).....	\$ Market Price
	CRAWFISH..... (seasonal).....	\$ Market Price
** Corn and Sausages added for 2lbs or more ONLY **		
	SHRIMP.....	\$8.99/lb

** Seasonings for Shrimp and Crawfish **

- RAIJIN CAJUN (ORIGINAL)
- LEMON PEPPER
- GARLIC BUTTER
- THE WHOLE SHA-BANG! (all of the above)

EXTRAS!

Corn on the cob.....	\$.50/ea
Sausage.....	\$1.99/6 pcs. or \$2.99/12 pcs.
Gumbo - w/ or w/o rice.....	\$4.99/cup
Xtra Condiments.....	\$.50/ea
(Garlic Butter, Butter, Ket/Mayo, Mayo, G-Sauce)	

Thirsty?

Soda - ONE SIZE (FREE refills).....	\$1.50
Bottled Water.....	\$1.25
Domestic Beer.....	\$2.00
(Budweiser, Bud Light, Michelob)	
Imported Beer.....	\$2.50
(Heineken, Corona)	

*** DINE IN: A 15% gratuity will be added
for parties of 6 or more ***

\$20 minimum required on
all credit card purchases

OPEN 7 days a week!

MON - FRI 3:00 PM - 10:00 PM

SAT - SUN 12:00 PM - 10:00 PM

*** WARNING: This facility offers raw oysters from the Gulf of Mexico. Eating these oysters may cause severe illness and even death in persons who have liver disease (for ex. alcoholic cirrhosis), cancer or other chronic illness that weaken the immune system. If you eat raw oysters and become ill, you should seek immediate medical attention. If you are unsure if you are at risk, you should consult your physician.

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT E

THE BOILING CRAB



*CRAWFISH * SHRIMP * OYSTER * GUMBO*

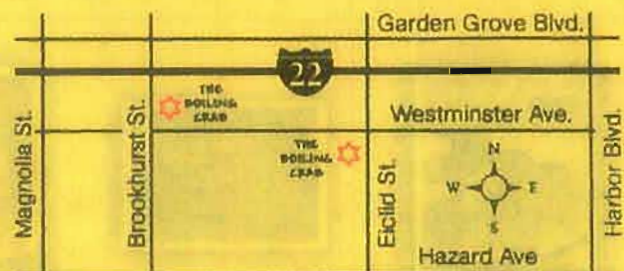
Louisiana Crawfish
The best tail in town

Mon - Fri: 3PM - 10PM • Sat - Sun: 12PM - 10PM

14241 Euclid Street #C-116
Garden Grove, CA 92843
714-265-CRAB (2722)

13892 Brookhurst Street
Garden Grove, CA 92843

714-636-4885



www.theboilingcrab.com

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT F



contact us | myspace | employment opportunities | design by: gus rosales

EXHIBIT F
Page 26

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT G



MySpace Search powered by Google

Home | Browse | Search | Invite | Film | Mail | Blog | Favorites | Forum | Groups | Events | Videos | Music | Comedy | Classifieds

Boiling Crab



"make a cow happy.. EAT SEAFOOD!!!"

Male
27 years old
GARDEN GROVE,
California
United States

Last Login: 8/19/2007

View My: [Pics](#) | [Videos](#)

Contacting Boiling Crab

- | | |
|-----------------|-------------------|
| Send Message | Forward to Friend |
| Add to Friends | Add to Favorites |
| Instant Message | Block User |
| Add to Group | Rank User |

MySpace URL:

<http://www.myspace.com/theboilingcrab>



Boiling Crab's Interests

- | | |
|-------------------|---|
| General | (7 1 4) 2 6 5 - c r a b |
| Music | tunes that make you wanna shake your tail feather and tap your feet |
| Television | sport channels, food network, mtv, family guy, american idol, oprah, dancing with the stars, the simpsons, and some more sport channels |
| Groups: | The Boiling Crab Eater's CLUB!!!

View All Boiling Crab's Groups |

Boiling Crab's Details

Status: Single

Boiling Crab is in your extended network

Boiling Crab's Latest Blog Entry ([Subscribe to this Blog](#))

([View All Blog Entries](#))

Boiling Crab's Blurbs

About me:

hop on the train and see where everyone is headed to!!!
serving louisiana **crawfish**, louisiana raw **oysters**, texas **blue crab**, **dungeoness crab**, **king crab legs**, texas **shrimp**, and maine **lobster** (seasonal) with our own **ORIGINAL** seasonings: rajun cajun, garlic butter, lemon pepper, and the whole sha-bang. also serving **gumbo**, **corn** and **sausages**.

new items added to the menu:

fried catfish
cajun hot wings
fried shrimp
cajun fries
king crab legs
san fran crab
potatoes
shrimp etouffe

COME JOIN THE FUN! we have some new items up our sleeves so don't forget to ask about that. it's head suckn' tail pinchn' good.

catch us during the hours of
Monday thru Friday **3pm-10pm**
AND
Saturday thru Sunday **12pm-10pm**

you can find us at

14241 Euclid Street
(714)265-2722

ALSO!!!

our new **2nd** location
13892 Brookhurst Street
(714) 636-4885

in a **Garden Grove** city near you!

our 3rd Location
8300 W Sam Houston Pkwy
S#268
Houston, TX 77072
(281) 988-4750

EXHIBIT G
Page 27

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT H

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,256,219

Registered June 26, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

THE BOILING CRAB

SINHDARELLA INC. (CALIFORNIA CORPORATION)

16130 WHITECAP CIRCLE

FOUNTAIN VALLEY, CA 927081843

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 6-13-2003; IN COMMERCE 9-11-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRAB", APART FROM THE MARK AS SHOWN.

SER. NO. 78-954,843, FILED 8-17-2006.

KATHY DE JONGE, EXAMINING ATTORNEY

EXHIBIT H

Page 29

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT I

The Boiling Crab

GRAND OPENING 06.24.06

LOUISIANA CRAWFISH - CRAB - OYSTERS - SHRIMP - CLAM

EXHIBIT I
Page 30

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT J



THE BOILING CRAB
393 N CAPITOL AVE
SAN JOSE, CA 95133
(408)347-8344

Menu

LOUISIANA CRAWFISH \$8.99 /lb
Extra: garlic butter \$.50

OYSTERS (Raw) 6pieces \$9.99

CRAB**L.A. Cajun style/Steam** \$9.99/lb

SHRIMP**L.A. Cajun style/Steam** ..\$7.99/lb

CLAM**Steam Only** \$7.99/lb

CORN..... \$.50/EA

SAUSAGE..... \$.50/EA

DRINK

SODA (Coke, 7 up, Diet Coke).....\$1.50/EA

BOTTLE WATER.....\$1.50/EA

DOMESTIC BEER.....\$3.50/EA
(Budweiser, Budlight, Barcadi,)

IMPORTER BEER.....\$3.50/EA
(Heineken, Corona, Negro Modelo, Pacifico)

OPEN 7 DAYS A WEEK!

MON-FRI 3:00 PM-10:00 PM

SAT-SUN 12:00 PM-10:00 PM

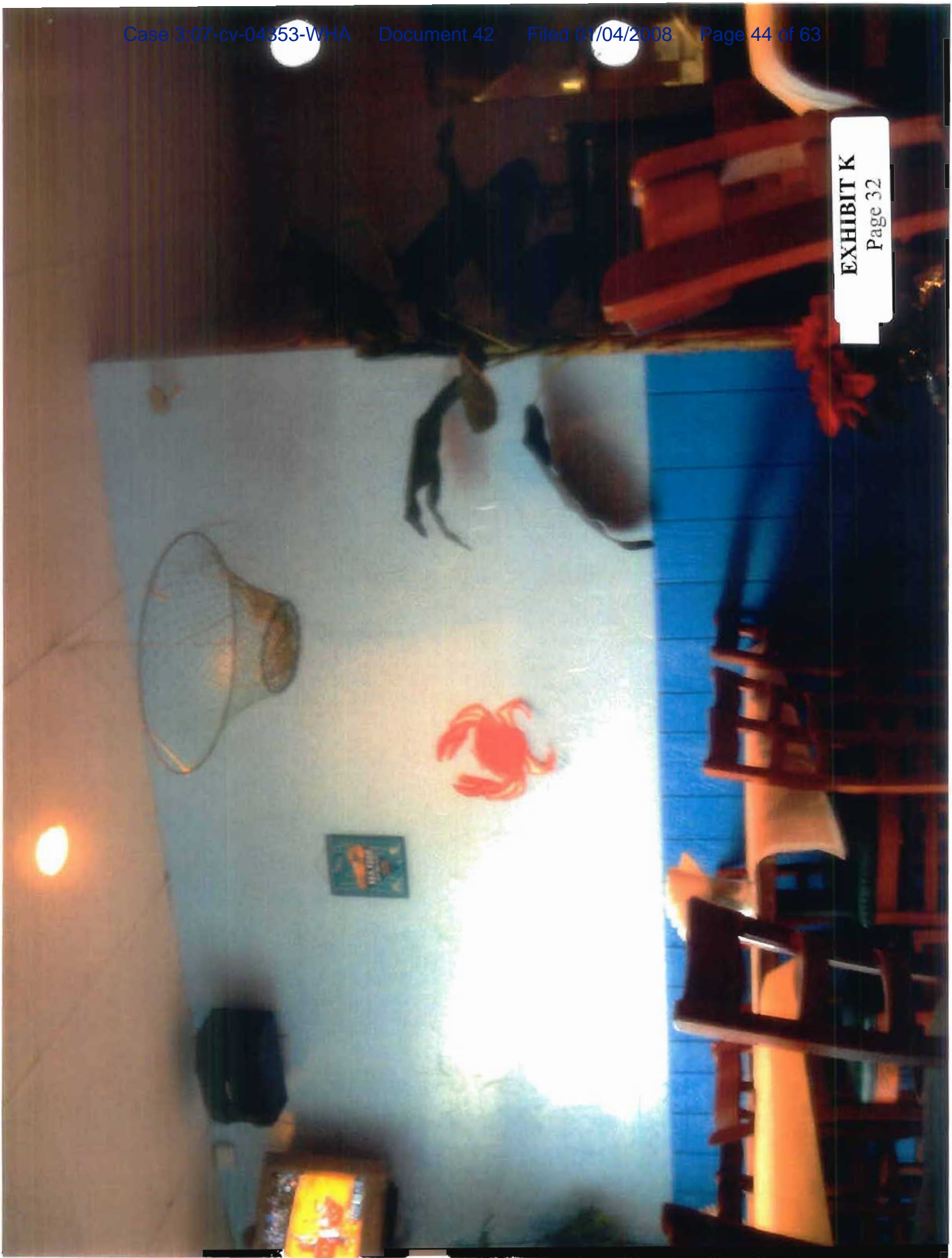
Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT K

EXHIBIT K
Page 32



Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT L



Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT M

LATHAM & WATKINS LLP

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Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

May 22, 2007

VIA CERTIFIED MAIL

Mr. Kevin Vu d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

File No. 043376-0000

Re: Trademark Infringement – THE BOILING CRAB trademark

Dear Mr. Vu:

We represent Sinhdarella Inc. d/b/a The Boiling Crab ("The Boiling Crab") in intellectual property enforcement matters.

The Boiling Crab has offered and sold restaurant services and related products and services under the trademark **THE BOILING CRAB**, including by operating restaurants specializing in Louisiana-style seafood dishes under the trademark **THE BOILING CRAB**, since at least as early as 2003. The Boiling Crab is the owner of valuable trademark rights that have contributed to its success, including the trademark **THE BOILING CRAB**. The Boiling Crab also owns United States Trademark Application Serial No. 78/954,843 for the trademark **THE BOILING CRAB** in International Class No. 43 in connection with *restaurant services*. The United States Patent and Trademark Office has reviewed The Boiling Crab's application, approved it for publication, and it is expected that a registration on this application will be issued shortly. The Boiling Crab is firmly committed to defending its valuable trademark rights.

It has come to our attention that you are operating a Louisiana-style seafood restaurant under the name **THE BOILING CRAB**, without the consent or authorization of The Boiling Crab. Photographs of your restaurant are enclosed herewith.

Your unauthorized use of our client's **THE BOILING CRAB** trademark is likely to cause confusion and constitutes: (1) trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. § 1125(a); (2) trademark dilution in violation of 15 U.S.C. § 1125(c); (3) trademark infringement, unfair competition, and dilution under California law and the law of other states; and (4) a violation of various other state and federal laws.

By way of this letter, The Boiling Crab demands that you, and all persons and entities affiliated with you, immediately cease and desist from any further use of the name **THE BOILING CRAB**, or of any other mark that is confusingly similar to the trademark **THE**

LATHAM & WATKINS LLP

BOILING CRAB. The Boiling Crab also demands that you immediately provide us with the following information:

1. A detailed summary of your total gross revenues from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present;
2. A detailed summary of your expenses from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present; and
3. A detailed summary of all uses by you of the trademark **THE BOILING CRAB**.

Please send me written acknowledgment by no later than **June 1, 2007** that you have complied, and will permanently comply, with these demands. So long as you do so, we will work with you to try to reach an amicable resolution of this matter. If you fail to abide by these reasonable demands, The Boiling Crab may have no choice but to protect its rights through litigation. If The Boiling Crab is forced to protect its valuable trademark rights through litigation, it will seek all available remedies, including but not limited to preliminary and permanent injunctive relief, damages, increased damages, attorneys' fees, and costs. Moreover, if you continue to use the name **THE BOILING CRAB** after receipt of this letter, such continuing use would unquestionably constitute willful infringement, thereby entitling The Boiling Crab to additional remedies in the event that litigation is necessary.

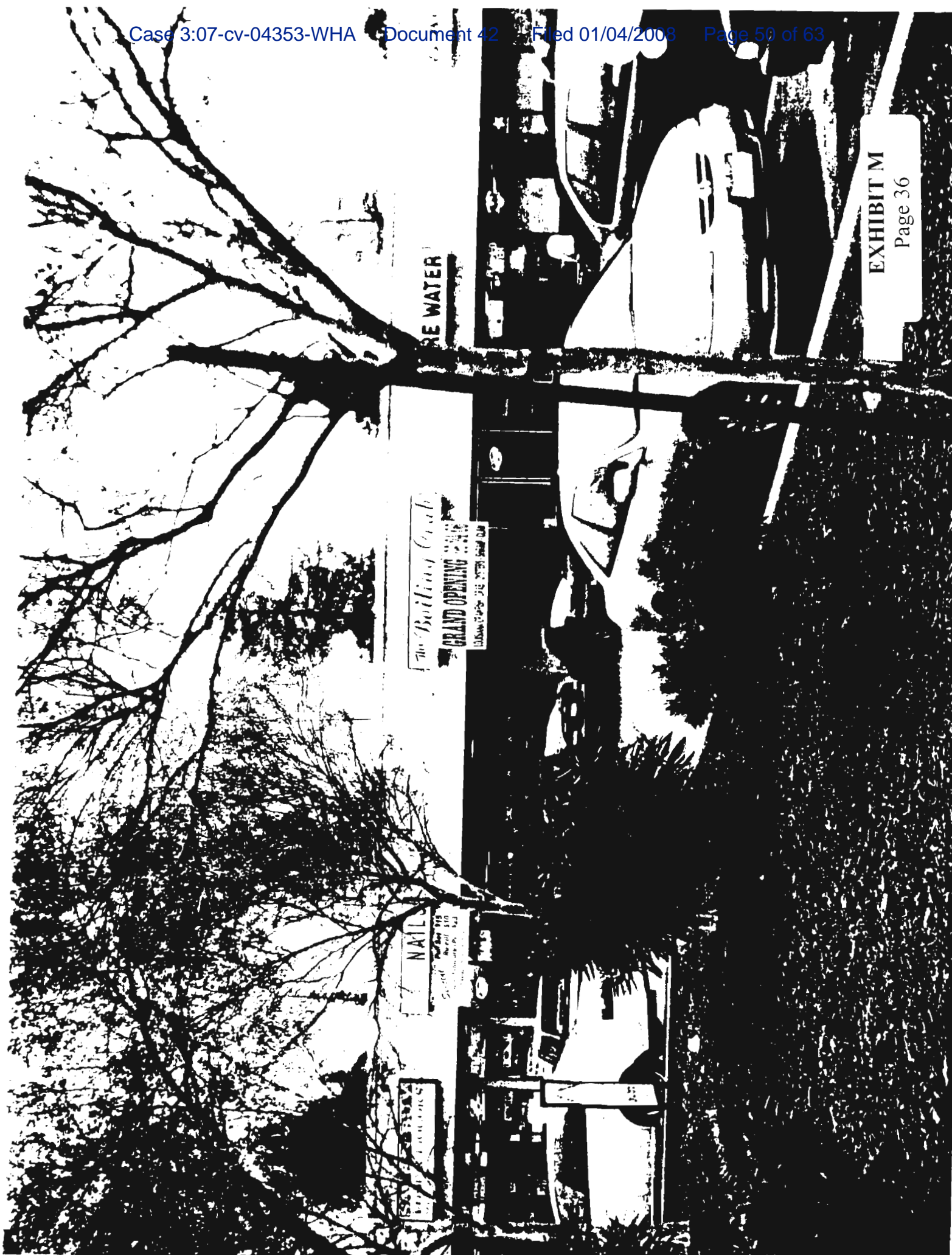
We are hopeful that you are willing to work with us to reach an amicable resolution of this matter. Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Sincerely,



Michael W. De Vries
of LATHAM & WATKINS LLP

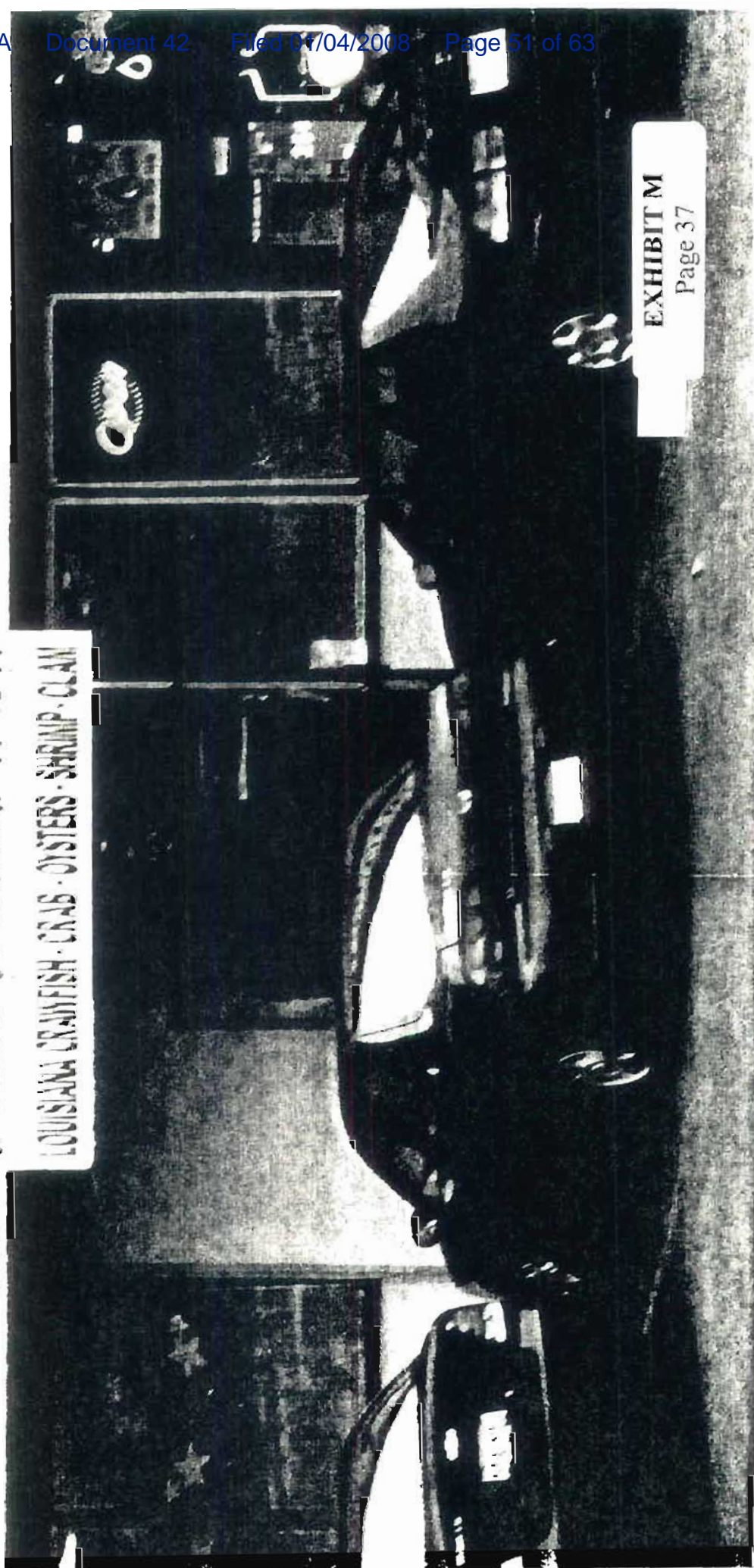
Enclosures (photographs)



GRAND OPENING OF A.M.

LOUISIANA CRAYFISH - CRAB - OYSTERS - SHRIMP - CLAM

EXHIBIT M
Page 37



Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT N

Michael De Vries

Attorney

Direct Dial: (714) 755-8170

mike.devries@lw.com

own Center Drive, 20th Floor

Costa Mesa, California 92626-1925

Tel: +714.540.1235 Fax: +714.755.8290

www.lw.com

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London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

June 26, 2007

VIA FEDERAL EXPRESS

Mr. Kevin Vu
d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

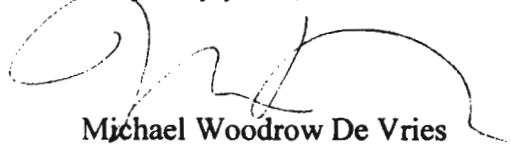
Re: **Trademark Infringement – THE BOILING CRAB trademark**

Dear Mr. Vu:

Please find enclosed an additional copy of my letter to you dated May 22, 2007, which was sent to you via Certified Mail on that date. Your prompt attention to this matter is requested. If you fail to respond to our May 22 letter and agree to the reasonable demands contained therein by July 6, 2007, we will assume you have no intention to do so and will proceed accordingly.

Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Very truly yours,



Michael Woodrow De Vries
of LATHAM & WATKINS LLP

Enclosure

EXHIBIT N
Page 38

LATHAM & WATKINS LLP

May 22, 2007

VIA CERTIFIED MAIL

Mr. Kevin Vu d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

FIRM / AFFILIATE OFFICES
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Brussels New York
Chicago Northern Virginia
Frankfurt Orange County
Hamburg Paris
Hong Kong San Diego
London San Francisco
Los Angeles Shanghai
Madrid Silicon Valley
Milan Singapore
Moscow Tokyo
Munich Washington, D.C.

File No. 043376-0000

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Your unauthorized use of our client's **THE BOILING CRAB** trademark is likely to cause confusion and constitutes: (1) trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. § 1125(a); (2) trademark dilution in violation of 15 U.S.C. § 1125(c); (3) trademark infringement, unfair competition, and dilution under California law and the law of other states; and (4) a violation of various other state and federal laws.

By way of this letter, The Boiling Crab demands that you, and all persons and entities affiliated with you, immediately cease and desist from any further use of the name **THE BOILING CRAB**, or of any other mark that is confusingly similar to the trademark **THE**

EXHIBIT N
Page 39

LATHAM & WATKINS^{LLP}

BOILING CRAB. The Boiling Crab also demands that you immediately provide us with the following information:

1. A detailed summary of your total gross revenues from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present;
2. A detailed summary of your expenses from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present; and
3. A detailed summary of all uses by you of the trademark **THE BOILING CRAB**.

Please send me written acknowledgment by no later than **June 1, 2007** that you have complied, and will permanently comply, with these demands. So long as you do so, we will work with you to try to reach an amicable resolution of this matter. If you fail to abide by these reasonable demands, The Boiling Crab may have no choice but to protect its rights through litigation. If The Boiling Crab is forced to protect its valuable trademark rights through litigation, it will seek all available remedies, including but not limited to preliminary and permanent injunctive relief, damages, increased damages, attorneys' fees, and costs. Moreover, if you continue to use the name **THE BOILING CRAB** after receipt of this letter, such continuing use would unquestionably constitute willful infringement, thereby entitling The Boiling Crab to additional remedies in the event that litigation is necessary.

We are hopeful that you are willing to work with us to reach an amicable resolution of this matter. Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

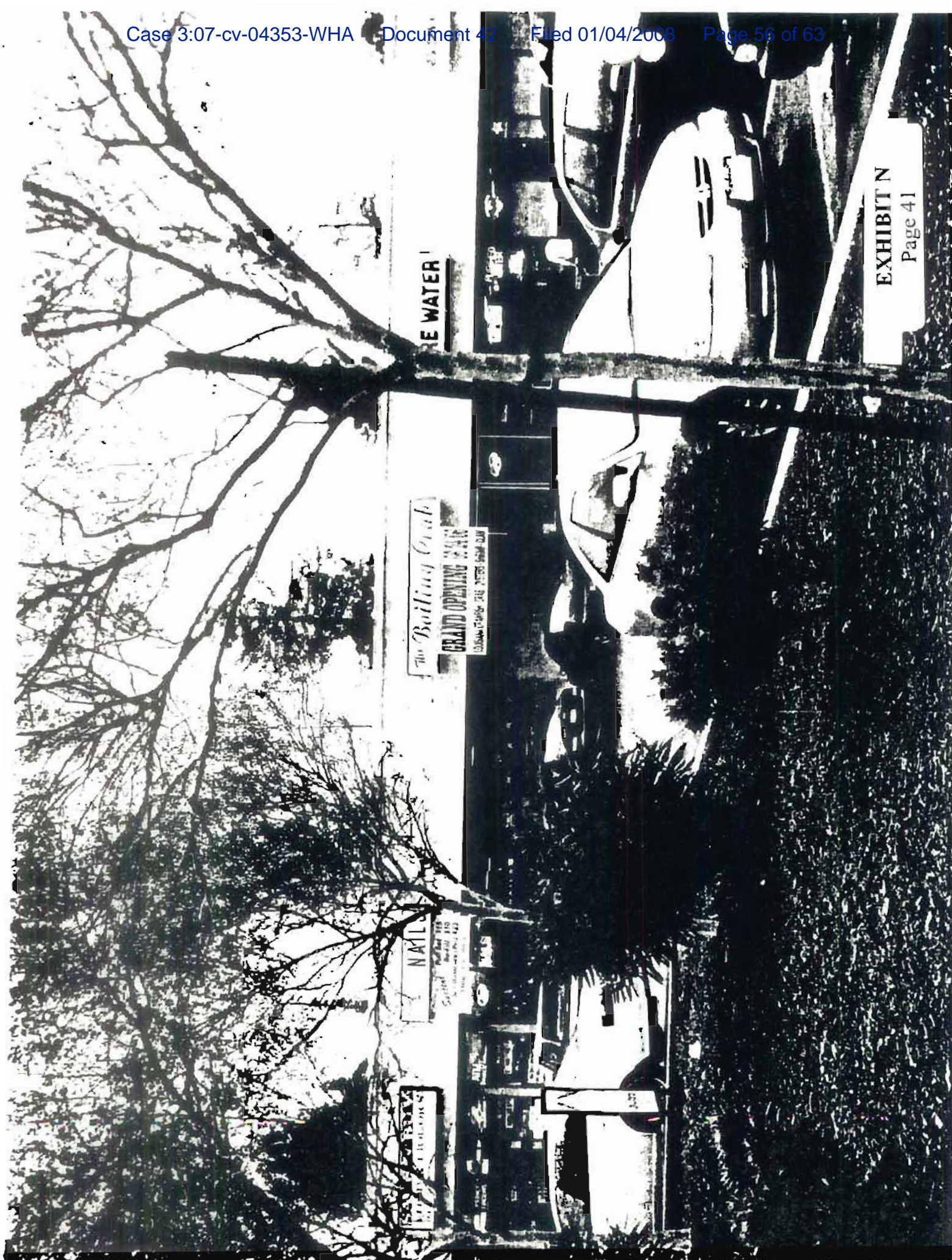
Sincerely,



Michael W. De Vries
of LATHAM & WATKINS LLP

Enclosures (photographs)

EXHIBIT N
Page 40



LOUISIANA CRAYFISH - CRAB - OYSTERS - SHRIMP - CLAM

LOUISIANA CRAYFISH - CRAB - OYSTERS - SHRIMP - CLAM

EXHIBIT N
Page 42

Sinhdarella, Inc. v. Kevin Vu, et al.

Case No. C 07 04353 WHA

First Amended Complaint

EXHIBIT O

Michael De Vries
Attorney
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July 23, 2007

VIA MESSENGER

Mr. Kevin Vu
d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

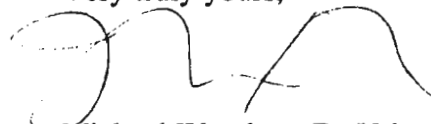
Re: **Trademark Infringement – THE BOILING CRAB trademark**

Dear Mr. Vu:

Please find enclosed an additional copy of my letter to you dated May 22, 2007, which was sent to you via Certified Mail on that date and via Federal Express on July 16, 2007. Your prompt attention to this matter is requested. If you fail to respond to our May 22 letter and agree to the reasonable demands contained therein by August 5, 2007, we will assume you have no intention to do so and will proceed accordingly.

Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Very truly yours,



Michael Woodrow De Vries
of LATHAM & WATKINS LLP

Enclosure

EXHIBIT O
Page 43

LATHAM & WATKINS LLP

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Moscow	Tokyo
Munich	Washington, D.C.

May 22, 2007

VIA CERTIFIED MAIL

Mr. Kevin Vu d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

File No. 043376-0000

Re: Trademark Infringement – THE BOILING CRAB trademark

Dear Mr. Vu:

We represent Sinhdarella Inc. d/b/a The Boiling Crab ("The Boiling Crab") in intellectual property enforcement matters.

The Boiling Crab has offered and sold restaurant services and related products and services under the trademark **THE BOILING CRAB**, including by operating restaurants specializing in Louisiana-style seafood dishes under the trademark **THE BOILING CRAB**, since at least as early as 2003. The Boiling Crab is the owner of valuable trademark rights that have contributed to its success, including the trademark **THE BOILING CRAB**. The Boiling Crab also owns United States Trademark Application Serial No. 78/954,843 for the trademark **THE BOILING CRAB** in International Class No. 43 in connection with *restaurant services*. The United States Patent and Trademark Office has reviewed The Boiling Crab's application, approved it for publication, and it is expected that a registration on this application will be issued shortly. The Boiling Crab is firmly committed to defending its valuable trademark rights.

It has come to our attention that you are operating a Louisiana-style seafood restaurant under the name **THE BOILING CRAB**, without the consent or authorization of The Boiling Crab. Photographs of your restaurant are enclosed herewith.

Your unauthorized use of our client's **THE BOILING CRAB** trademark is likely to cause confusion and constitutes: (1) trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. § 1125(a); (2) trademark dilution in violation of 15 U.S.C. § 1125(c); (3) trademark infringement, unfair competition, and dilution under California law and the law of other states; and (4) a violation of various other state and federal laws.

By way of this letter, The Boiling Crab demands that you, and all persons and entities affiliated with you, immediately cease and desist from any further use of the name **THE BOILING CRAB**, or of any other mark that is confusingly similar to the trademark **THE**

EXHIBIT O

Page 44

LATHAM & WATKINS LLP

BOILING CRAB. The Boiling Crab also demands that you immediately provide us with the following information:

1. A detailed summary of your total gross revenues from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present;
2. A detailed summary of your expenses from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present; and
3. A detailed summary of all uses by you of the trademark **THE BOILING CRAB**.

Please send me written acknowledgment by no later than **June 1, 2007** that you have complied, and will permanently comply, with these demands. So long as you do so, we will work with you to try to reach an amicable resolution of this matter. If you fail to abide by these reasonable demands, The Boiling Crab may have no choice but to protect its rights through litigation. If The Boiling Crab is forced to protect its valuable trademark rights through litigation, it will seek all available remedies, including but not limited to preliminary and permanent injunctive relief, damages, increased damages, attorneys' fees, and costs. Moreover, if you continue to use the name **THE BOILING CRAB** after receipt of this letter, such continuing use would unquestionably constitute willful infringement, thereby entitling The Boiling Crab to additional remedies in the event that litigation is necessary.

We are hopeful that you are willing to work with us to reach an amicable resolution of this matter. Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Sincerely,



Michael W. De Vries
of LATHAM & WATKINS LLP

Enclosures (photographs)

EXHIBIT O
Page 45



GRAND OPENING 06-24-06

LOUISIANA CRAYFISH - CRAB - OYSTERS - SHRIMP - CLAM

EXHIBIT O
Page 47